Supreme Court, U.S.
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No. 09-957

In The

Supreme Court of the United States

CHARLES PATTON,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Illinois Appellate Court

PETITION FOR A WRIT OF CERTIORARI

MARC W. MARTIN*
**Counsel of Record*
MARC MARTIN, LTD.
53 West Jackson Blvd.
Suite 1420
Chicago, IL 60604
(312) 408-1111

STEVEN J. WEINBERG
WEINBERG & RIZZI
53 West Jackson Blvd.
Suite 1460
Chicago, IL 60604
(312) 322-0097

Counsel for Petitioner
Charles Patton

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

In *Skilling v. United States*, No. 08-1394, presently pending in this Court, the Solicitor General has argued that the correct legal standard in the face of a Sixth Amendment jury challenge is whether any seated juror harbored actual bias. In this case, in which uncharged evidence of firearms possession was admitted, the petitioner argued on appeal that the trial court should have conducted voir dire about firearms, and pointed out that several jurors had had unpleasant life experiences with weapons. In affirming the petitioner's conviction, the Illinois Appellate Court only determined that the trial judge was not required to conduct voir dire about firearms, and did not particularly examine whether any of the seated jurors were actually biased.

An informant who received substantial benefits from the State "provided the bulk of the State's evidence" against the petitioner. Despite *Banks v. Dretke*, 540 U.S. 668, 701 (2004), *Hoffa v. United States*, 385 U.S. 293, 311 (1966), and *On Lee v. United States*, 343 U.S. 747, 757 (1952), the Illinois Appellate Court held that the informant's receipt of benefits did not warrant a cautionary jury instruction. Lower State and Federal courts have divided on whether such an instruction is necessary.

1. Should this case be vacated and remanded for a determination of whether any seated juror had actual bias?

QUESTIONS PRESENTED – Continued

2. Should a trial court instruct a jury to use caution when evaluating the testimony of an informant who has received benefits from the prosecution?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED ... 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION ... 7

I. BY FAILING TO DETERMINE WHETHER ANY OF THE SEATED JURORS WERE ACTUALLY BIASED, THE ILLINOIS APPELLATE COURT DID NOT APPLY THE CORRECT LEGAL STANDARD 7

II. *BANKS v. DRETKE*, 540 U.S. 668 (2004), *HOFFA v. UNITED STATES*, 385 U.S. 293 (1966), AND *ON LEE v. UNITED STATES*, 343 U.S. 747 (1952), NECESSITATE A CAUTIONARY JURY INSTRUCTION WHEN A PROSECUTION WITNESS HAS RECEIVED BENEFITS 12

CONCLUSION 21

APPENDIX A

Illinois Appellate Court Opinion ..... App. 1

APPENDIX B

Excerpt From Circuit Court Proceedings Regarding Firearm Voir Dire ..... App. 43

TABLE OF CONTENTS – Continued

Page

APPENDIX C

Excerpt From Circuit Court Proceedings Regarding Jury Instructions Conference ..... App. 46

APPENDIX D

Illinois Supreme Court Order Denying Leave To Appeal ..... App. 49

APPENDIX E

Excerpt From Circuit Court Proceedings Regarding Jury Selection ..... App. 50

APPENDIX F

Proposed Benefits Instruction ..... App. 70

APPENDIX G

Excerpt From Circuit Court Proceedings Regarding Given Jury Instructions ..... App. 71

TABLE OF AUTHORITIES

Page

CASES

Aldridge v. United States, 283 U.S. 308 (1931) 9

Banks v. Dretke, 540 U.S. 668 (2004) 12, 14, 17, 20

Crawford v. Washington, 541 U.S. 36 (2004) 13

Duncan v. Louisiana, 391 U.S. 145 (1968) 9

Ham v. South Carolina, 408 U.S. 524 (1973) 9

Hoffa v. United States, 385 U.S. 293 (1966) ..... *passim*

Irvin v. Dowd, 366 U.S. 717 (1961) 9

Morgan v. Illinois, 504 U.S. 719 (1992) 9

Mu'min v. Virginia, 500 U.S. 415 (1991) 9

Murphy v. Florida, 421 U.S. 794 (1975) 10

On Lee v. United States, 343 U.S. 747 (1952) 12, 13, 16, 17, 20

People v. Askew, 273 Ill.App.3d 798, 652 N.E.2d 1041 (1995) 20

People v. Columbo, 118 Ill.App.3d 882, 455 N.E.2d 733 (1983) 20

People v. Foster, 199 Ill.App.3d 372, 556 N.E.2d 1289 (1990) 20

People v. Jackson, 145 Ill.App.3d 626, 495 N.E.2d 1207 (1986) 20

Rosales-Lopez v. United States, 451 U.S. 182 (1981) 9

Schad v. Arizona, 501 U.S. 624 (1991) 13

Skilling v. United States, No. 08-1394 (U.S.) 10, 11

TABLE OF AUTHORITIES – Continued

Page

State v. Patterson, 276 Conn. 452, 886 A.2d 777 (2005) 16, 17, 18, 19

Strickland v. Washington, 466 U.S. 668 (1984) 13

Turner v. Louisiana, 379 U.S. 466 (1965) 9

United States v. Dennis, 183 F.2d 201 (2d Cir. 1950) 12

Zafiro v. United States, 506 U.S. 534 (1993) 13

UNITED STATES CONSTITUTION

U.S. Const., Amend. VI 1, 9, 13

U.S. Const., Amend. XIV 1, 9, 13

JURY INSTRUCTIONS

IPI Criminal (4th ed.) 20

IPI § 1.02 15

IPI § 3.17 ..... 16, 19

Seventh Circuit's *Federal Jury Instructions Criminal* § 3.13 (1999) 14

MISCELLANEOUS

2004 Annual Report Of The Committee On Criminal Law And Probation Administration To The Illinois Judicial Conference 19

TABLE OF AUTHORITIES – Continued

Page

Ken Armstrong & Steve Mills, Series: Tribune Investigative Report, The Failure of the Death Penalty in Illinois: A Five-Part Series, *Chicago Tribune*, Nov. 14-19, 1999 19

Skilling v. United States, No. 08-1394, Brief for the United States 10, 11

Report of the Governor's Commission on Capital Punishment 19

PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Patton respectfully petitions for a writ of certiorari to review the Illinois Appellate Court's judgment.

OPINION BELOW

The Illinois Appellate Court's opinion is unpublished, and is attached in Appendix A.

JURISDICTION

The Illinois Supreme Court denied leave to appeal from the Illinois Appellate Court's judgment on November 25, 2009. Appendix D. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right to . . . trial, by an impartial jury. . . ."

The Fourteenth Amendment to the United States Constitution provides, in relevant part, " . . . nor shall any State deprive any person of . . . liberty . . . without due process of law. . . ."

STATEMENT OF THE CASE

Petitioner owned a music production company known as 1st and 15th Entertainment ("1st and 15th"). Wassalu Jaco, known as "Lupe Fiasco," a Grammy nominated rapper/musician, was the vice president of 1st and 15th. App. A-16. The petitioner worked in various professional recording studios in California and the Chicagoland area, including one at his home in Riverdale, Illinois. As CEO, the petitioner took care of the business side of 1st and 15th. In 2002, Jaco signed a million dollar recording deal with Arista Records, of which 1st and 15th was a beneficiary.

Torrick Hall ("Hall") was a "hanger-on," who, along with his brother Marcus Hall, frequented recording studios used by the petitioner. Hall occasionally brought talent to the petitioner for auditions. Pet. App. Ct. Br. 24-26.

Commencing in February 2003, the Chicago Police Department initiated a wiretap-based investigation in which conversations over cellular telephones belonging to the petitioner and Hall were intercepted. The wiretaps occurred over three months, and ended upon the execution of search warrants and the arrests of various individuals including the petitioner, Inita Patton (the petitioner's wife), Hall, Marcus Hall and others.

Hall entered into a plea agreement with the State, and testified as a State's witness at a jury trial in which the petitioner and his wife were the

defendants. As the appellate court in this case noted, "Hall provided the bulk of the State's evidence." App. A-4. Although Hall faced a maximum sentence of 60 years imprisonment, the State agreed to request a 10-year prison sentence, while Hall retained the right to ask for a 6-year sentence. In addition, Hall was not required to testify against his brother. *Id.* at 4-5. Further, Hall's sister, from whose apartment heroin distribution activities had been conducted, was not charged with any offenses. Pet. App. Ct. Br. 7-8. Also, after agreeing to cooperate, Hall was transferred from a maximum-security division at the Cook County Jail, to "witness quarters" where prosecution investigators stood guard. *Id.*

The State played 197 wiretap conversations at trial. Hall, who claimed that he worked in a drug distribution business with the petitioner since approximately 1997, interpreted the conversations during a five-day direct examination. The State also called a series of police officers, who testified about surveillance conducted during the wiretap, including observations of multiple alleged drug transactions in which the police did not intercede. App. A-8-10.

During the investigation, police conducted two separate surreptitious stops that resulted in the recovery of heroin from Co-Defendants Jerry Warren and Edmund Forrest, respectively. The petitioner's conversations shortly after these incidents were admitted. App. A-3-4, 8-9.

On April 30, 2004, police observed Co-Defendant Darryl Hale meet Hall. Police stopped Hale's vehicle and recovered 234 tinfoil packets, 140 of which were tested and found to contain 15.3 grams of heroin. Police arrested Hale. At the police station, Hale called Hall, and asked him to "tell Big Fella to reach for me." The State theorized that the petitioner was the "Big Fella" or the "Big Man," because of his large stature. (Petitioner weighed over 400 pounds.) *Id.* at App. A-2, 9-10. The petitioner took the position that Marcus Hall, who stood 6'8" and weighed 250 pounds, was the "Big Man." Pet. App. Ct. Br. 2.

Police executed a series of search warrants on May 8, 2003, including at the apartment of Hall's sister, Sherell Lee. Hall was present when police arrived there. Approximately 15 grams of heroin, wrapped in 250 tinfoil packets, were seized from Hall's person. Over 724 grams of heroin and drug distribution paraphernalia were found in other places in the apartment. App. A-11-12.

Marcus Hall was present in Lee's apartment when the search warrant was executed. Police recovered $2,200 from his person and vehicle. Marcus Hall allowed the officers to search his apartment in University Park, Illinois, in which 171.5 grams of heroin and a .9 mm pistol were recovered. *Id.* at A-12.

At Hall's home in Dolton, Illinois, police recovered over 100 grams of heroin, including heroin packaged in over 500 tin-foil packets, a .9 mm pistol and $35,000 in cash. *Id.* at A-12-13.

Police also forcibly executed a search warrant at the petitioner's residence. The first officer in the home testified that he encountered the petitioner in the hallway holding a handgun in his right hand, and that the petitioner dropped gun after being asked to do so. The petitioner unsuccessfully objected to this testimony on grounds that the officer's claim was not recounted in any police report or discovery. Pet. App. Ct. Br. 20. A .9 mm handgun was also found in a master bedroom closet. App. A-13-14.

No money or drugs were recovered from the petitioner's home. In the basement, police found lactose (a diluting agent), as well as two books about cocaine and opium, which Jaco testified (in defense) belonged to him. *Id.* at A-14, 17. The lactose bottles were not sent for fingerprint analysis.

At the petitioner's residence, an officer recovered keys near a woman's purse in the kitchen. A State witness testified about Inita Patton's connection to a storage facility, and the wiretap included conversations between the petitioner and his wife regarding a storage facility. Police went to a storage locker facility, believed to contain the locker in question, and found that one of the keys fit a locker. When an officer informed the petitioner's wife about this, she asked whether she would be charged with "that stuff." App. A-23. Police obtained and executed a search warrant for the storage locker. A black duffel bag containing 63 small plastic bags was seized. Sixteen of the bags were chemically analyzed and found to contain 1,573.5 grams of heroin. *Id.* at A-15-16.

The grand jury returned an indictment charging the petitioner with criminal drug conspiracy (alleged to have occurred between December 26, 2002 and May 8, 2003); delivery of a controlled substance on March 25, 2003 (the heroin seized from Warren); and possession of a controlled substance with intent to deliver (the heroin seized from the storage locker). *Id.* at A-26. The petitioner's wife was charged with criminal drug conspiracy, and possession with intent to deliver the heroin recovered from the storage locker.

Petitioner and his wife went to trial before the same jury. The circuit court conducted no voir dire regarding firearms. Pet. App. Ct. Br. 31-36. At the jury instructions conference, the circuit court refused to give an instruction directing the jury to view Hall's testimony with caution and great care because he had received benefits from the State. App. A-34; App. C-47; App. F-70.

The jury found the petitioner guilty of the conspiracy and possession charges, and acquitted him of the delivery charge. The jury acquitted the petitioner's wife.

At sentencing, the petitioner presented substantial mitigation, including his military service (having served in Gulf War combat which resulted in injury); family ties (he is a dedicated father of three small children); and character letters, including some from music business executives, who attested to the petitioner's many acts of charity and generosity,

musical talent and success, and hard-working nature. In aggravation, the State noted the petitioner's 11-year-old drug conviction. The circuit court found the case called for a "severe" sentence, and imposed a 44-year penitentiary term. Pet. App. Ct. Br. 66-70.

Petitioner appealed to the Illinois Appellate Court for the First District, raising a plethora of issues, including whether jurors were biased because of firearms, as well as the circuit court's failure to give the "benefits" jury instruction. The appellate court rejected the petitioner's arguments, and affirmed in all respects. App. A.

REASONS FOR GRANTING THE PETITION

I. BY FAILING TO DETERMINE WHETHER ANY OF THE SEATED JURORS WERE ACTUALLY BIASED, THE ILLINOIS APPELLATE COURT DID NOT APPLY THE CORRECT LEGAL STANDARD

The indictment did not charge the petitioner with any firearms offenses. At the conclusion of the voir dire, petitioner moved in limine to bar evidence of the firearms recovered from his home during the execution of the search warrant on relevance and prejudice grounds. App. B-44-45. The defense pointed out that no voir dire had been conducted regarding bias resulting from views about firearms. The circuit court

responded that voir dire on specific evidence was impermissible, and denied the limine motion.[1]

On appeal, the petitioner raised the issue of whether the circuit court should have questioned potential jurors about bias resulting from firearms. The petitioner argued that the failure to voir dire on this subject violated his right to a fair and impartial trial. App. A-19. The petitioner pointed out that several seated jurors had life experiences that could have rendered them biased. Pet. App. Ct. Br. 34. Specifically, Juror Yvonne Wilson had been robbed at gunpoint in an elevator. App. E-54. Juror Sara Hruska had had her purse stolen. App. E-57. Juror Barbara Collins had been robbed at knifepoint. App. E-60. Juror Jack Koennecke had a close friend who had been mugged and beaten. App. E-64. Juror David Odren had been mugged on two occasions. App. E-68-69.

The appellate court, which reviewed the issue under a plain error standard, agreed that "[e]very criminal defendant has a constitutional right to a jury trial comprised of impartial jury members." App. A-20. The court, however, found that a trial court has no duty to sua sponte ask questions about specific kinds of bias. *Id.* at A-21. The court did not resolve the

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[1] At trial, a Chicago police officer testified that, after forcibly entering the petitioner's residence to execute the search warrant, he encountered the petitioner armed with a loaded handgun. Pet. App. Ct. Br. 35. This testimony came as a surprise to the defense in that petitioner's possession of a handgun was not described in any police reports or discovery. *Id.* at 20.

petitioner's points regarding the partiality of specific jurors.

Duncan v. Louisiana, 391 U.S. 145 (1968), applied the Sixth Amendment's jury trial provision to the States.[2] "[P]art of the guarantee of a defendant's right to an impartial jury is an adequate *voir dire*." *Morgan v. Illinois*, 504 U.S. 719, 729 (1992). As this Court has stated, "Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored." *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981).

Regardless of what must be asked during voir dire,[3] a criminal defendant has a constitutional right

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[2] Prior to *Duncan*, this Court had held that the Fourteenth Amendment's Due Process Clause independently required an impartial jury. See *Turner v. Louisiana*, 379 U.S. 466 (1965); *Irvin v. Dowd*, 366 U.S. 717 (1961).

[3] Although a trial court has some discretion in voir dire, it is not entirely immune from constitutional scrutiny. *Morgan*, 504 U.S. at 730 (although the adequacy of voir dire is not easily amenable to appellate review, "certain inquiries must be made to effectuate constitutional protections"); cf. *Mu'min v. Virginia*, 500 U.S. 415 (1991) (trial court not constitutionally required to inquire about pretrial publicity). For example, *Ham v. South Carolina*, 408 U.S. 524 (1973), held that the "Fourteenth Amendment required the judge . . . to interrogate the jurors upon the subject of racial prejudice." See also *Aldridge v. United States*, 283 U.S. 308 (1931). *Morgan* held that, upon request, jurors should be asked whether they would automatically impose the death penalty in the event of a conviction. See also *Mu'min*, 500 U.S. 422-27 (surveying cases).

to "a panel of impartial, indifferent jurors." *Murphy v. Florida*, 421 U.S. 794 (1975). As the Solicitor General recently argued in *Skilling v. United States*, No. 08-1394 (U.S.):

> That principle is satisfied when no biased juror is actually seated at trial. See *Rivera* v. *Illinois*, 129 S. Ct. 1446, 1454 (2009) ("[H]aving been tried by a jury on which no biased juror sat, [the defendant] could not tenably assert any violation of his right to due process.") (internal quotation marks, citations, and ellipsis omitted); see *id.* at 1450 ("[i]f all seated jurors are qualified and unbiased," erroneous denial of defendant's peremptory challenge does not warrant reversal); see also *United States* v. *Martinez-Salazar*, 528 U.S. 304, 316 (2000); *Ross* v. *Oklahoma*, 487 U.S. 81, 85 (1988); *Patton* v. *Yount*, 467 U.S. 1025, 1035 (1984) ("The relevant question" is whether the jurors who decided the case "had such fixed opinions that they could not judge impartially the guilt of the defendant.").
>
> A defendant who argues that he was deprived of an impartial jury must establish that claim "not as a matter of speculation but as a demonstrable reality." *United States ex rel. Darcy* v. *Handy*, 351 U.S. 454, 462 (1956) (citation omitted). Thus, "[t]his Court has long held that the remedy for allegations of juror partiality" is the defendant's "opportunity to prove actual bias" on the part of a seated juror. *Smith*, 455 U.S. at 215; see *Dennis* v. *United States*, 339 U.S. 162,

> 171-172 (1950) ("Preservation of the opportunity to prove actual bias is a guarantee of a defendant's right to an impartial jury.").

Brief for the United States 20.

Certiorari should be granted because the Illinois courts did not apply this standard. When defense counsel argued that it would be inappropriate to admit uncharged firearms evidence since no voir dire had been conducted on the subject, the circuit court quickly dismissed the point. App. B-45. The circuit court conducted no inquiry into whether the responses of the selected jurors rendered them biased.

On appeal, the petitioner raised bias issues regarding several named jurors. Pet. App. Ct. Br. 34. Indeed, one juror had been robbed at gunpoint; another at knifepoint. See App. E-54, 60. The appellate court, however, did not assess whether any of the seated jurors were actually biased. See App. A-19-21. As this Court's cases and the Solicitor General's discussion in the *Skilling* brief makes clear, that is the applicable legal standard.

The record here establishes that the appellate court did not apply the correct legal standard in that it failed to determine whether any seated juror was biased. Accordingly, certiorari should be granted, the lower court judgment vacated and the case remanded for reconsideration.

II. *BANKS v. DRETKE*, 540 U.S. 668 (2004), *HOFFA v. UNITED STATES*, 385 U.S. 293 (1966), AND *ON LEE v. UNITED STATES*, 343 U.S. 747 (1952), NECESSITATE A CAUTIONARY JURY INSTRUCTION WHEN A PROSECUTION WITNESS HAS RECEIVED BENEFITS

The prosecution's use of informants remains commonplace. Cf. *United States v. Dennis*, 183 F.2d 201, 224 (2d Cir. 1950) (Hand, J.) ("Courts have countenanced the use of informers from time immemorial; in cases of conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely upon them or upon accomplices because the criminals will almost certainly proceed covertly."). No credible claim can be made that the prosecution is constitutionally proscribed from relying upon an informant's testimony or actions. See *Hoffa v. United States*, 385 U.S. 293, 311 (1966) (government's use of an informant "is not per se unconstitutional"); *On Lee v. United States*, 343 U.S. 747, 757 (1952) ("[T]o the extent that the argument for exclusion departs from such orthodox evidentiary canons as relevancy and credibility, it rests solely on the proposition that the Government shall be arbitrarily penalized for the low morals of its informers. However unwilling we as individuals may be to approve conduct such as that of [the informant], such disapproval must not be thought to justify a social policy of the magnitude necessary to arbitrarily exclude otherwise relevant evidence."). But this is not to say the prosecution is unchecked in its use of

informants. As this Court has stated, "[A] . . . government informer is [not] to the slightest degree more free from all relevant constitutional restrictions than is any other government agent." *Hoffa*, 385 U.S. at 311.

The United States Constitution requires States to provide an accused with a fair and impartial trial. U.S. Const., Amend. VI & XIV. In pursuit of the fair trial goal, this Court insists that trial procedures be designed to produce reliable results. Cf. *Crawford v. Washington*, 541 U.S. 36 (2004); *Zafiro v. United States*, 506 U.S. 534 (1993); *Strickland v. Washington*, 466 U.S. 668 (1984). This Court's concern for reliability has traversed in the area of jury instructions. E.g., *Schad v. Arizona*, 501 U.S. 624, 647-48 (1991).

More particularly, this Court has emphasized the need for jury instructions when the prosecution relies on an informant who has received benefits. In *On Lee*, this Court pronounced:

> The use of informers, accessories, accomplices, false friends, or any of the other betrayals which are 'dirty business' may raise serious questions of credibility. To the extent that they do, a defendant is entitled . . . to have the issues submitted to the jury with careful instructions.

343 U.S. at 757.

In *Hoffa*, this Court said, "The established safeguards of the Anglo-American legal system leave . . . the credibility of [a witness'] testimony to be

determined by a properly instructed jury." 385 U.S. at 311. *Hoffa* upheld a conviction against a constitutional challenge regarding the government's use of an informant since, inter alia, the trial court had directed the jury to consider the testimony of a witness who had received benefits from the government with caution and care. 385 U.S. at 313 n. 13.

More recently, in a habeas case in which the prosecution had suppressed informant and benefit information, this Court deemed jury instructions accompanying informant testimony "customary" and "truth-promoting." *Banks v. Dretke*, 540 U.S. 668, 701 (2004). *Banks* noted the existence of jury instructions from the First, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits "on special caution appropriate in assessing informant testimony." *Id.* at 702.

In this case, Hall, the State's principal witness, undisputedly received substantial benefits from the State, e.g., a promise to request a reduced prison sentence. Consequently, the petitioner tendered a jury instruction modeled after Seventh Circuit *Federal Jury Instructions Criminal* § 3.13 (1999). The instruction read:

> You have heard testimony from Torrick Hall who:
>
> (a) received immunity, that is, a promise from the government that any testimony or other information he/she provided would not be used against him/her in a criminal case; and

(b) received benefits from the government in connection with this case, namely he has signed a plea agreement in which the government has promised to recommend a sentence of 10 years; and

(c) has pleaded guilty to an offense arising out of the same occurrence for which the defendant is now on trial.

You may give his/her testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

App. F-70.

The circuit court refused this instruction on grounds it was argumentative and singled out a witness. App. C-47. The court instead gave a general credibility instruction:

> Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, and interest, bias or prejudice he may have, and the reasonableness of his testimony considered in light of all the evidence in the case.

App. G-72; Illinois Pattern Instructions Criminal ("IPI") § 1.02. The court also gave a pattern accomplice instruction:

> When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

App. G-72; IPI § 3.17.

No given jury instruction specifically addressed the subject of the benefits Hall received from the State as a result of his cooperation agreement.

On appeal, the appellate court acknowledged that due process requires jury instruction on "basic matters." App. A-33. The court, however, found that the circuit court did not err in refusing the proposed instruction because it was not a "pattern" instruction, and because the given instructions adequately informed the jury of the considerations in evaluating Hall's testimony. Although cited by the petitioner in his appellate brief, the appellate court did not discuss this Court's decisions in *On Lee* or *Hoffa*. Nor did the appellate court account for the wholesale absence of a benefits cautionary instruction. App. A-32-36.

There presently is a conflict among lower courts regarding the need to give a cautionary jury instruction when a prosecution witness has received benefits. The Connecticut Supreme Court's decision in *State v. Patterson*, 276 Conn. 452, 886 A.2d 777 (2005), is illustrative. In that case, McGahee was imprisoned with the defendant, who was charged with conspiracy to commit murder. Police officers

asked McGahee whether the defendant had made any admissions. McGahee "told the officers that he would assist them only if he received certain benefits in return." *Id.* at 465. McGahee sought, and ultimately was promised, a two-year reduction in a robbery prison sentence, a favorable recommendation on his pending narcotics case, assistance in obtaining early parole, transfer to another prison and restoration of revoked visitation rights.

At trial, the *Patterson* defendant requested the court to instruct the jury to consider McGahee's testimony with caution and care in light of these benefits. Like the lower courts in this case, the trial court in *Patterson* refused the instruction on grounds that the general credibility instructions sufficed.

On appeal, the Connecticut Supreme Court agreed that a witness who had been promised a benefit has powerful incentive "to implicate falsely the accused." *Id.* at 469. Citing this Court's decisions in *On Lee*, *Hoffa* and *Banks*, *Patterson* held:

> Because the testimony of an informant who expects to receive a benefit from the state in exchange for his or her cooperation is no less suspect than the testimony of an accomplice who expects leniency from the state, we conclude that the defendant was entitled to an instruction substantially in accord with the one he had sought.

Id. at 470.

Notably, *Patterson* cited a split in authority regarding "benefit" instructions:

> Our conclusion finds support in the case law of multiple jurisdictions. See, e.g., *United States v. Prawl*, 168 F.3d 622, 627-29 (2d Cir.1999); *United States v. Angiulo*, 897 F.2d 1169, 1208 (1st Cir.), cert. denied sub nom. *Granito v. United States*, 498 U.S. 845, 111 S.Ct. 130, 112 L.Ed.2d 98 (1990); *United States v. Goff*, 847 F.2d 149, 161 (5th Cir.), cert. denied sub nom. *Kuntze v. United States*, 488 U.S. 932, 109 S.Ct. 324, 102 L.Ed.2d 341 (1988); *United States v. Shearer*, 794 F.2d 1545, 1551 (11th Cir.1986); *People v. Dela Rosa*, 644 F.2d 1257, 1259-60 (9th Cir.1980); *Moore v. State*, 787 So.2d 1282, 1286 (Miss.2001); *Dodd v. State*, 993 P.2d 778, 784 (Okla. Crim.App.2000); see also 2 K. O'Malley, J. Grenig & W. Lee, Federal Jury Practice and Instructions (5th Ed. 2000) § 15.02, pp. 364-80. But see *United States v. Cook*, 102 F.3d 249, 252 (7th Cir.1996) (declining to adopt rule requiring special instruction regarding credibility of informant who has been promised benefit by state in exchange for testimony); *United States v. Ridinger*, 805 F.2d 818, 820-22 (8th Cir.1986) (same); *Parrish v. Commonwealth*, 121 S.W.3d 198, 203 (Ky.2003) (same), cert.denied, 541 U.S. 1050, 124 S.Ct. 2180, 158 L.Ed.2d 746 (2004); *Lovitt v. Warden*, 266 Va. 216, 252, 585 S.E.2d 801 (2003) (same), cert. denied sub nom. *Lovitt v. True*,

541 U.S. 1006, 124 S.Ct. 2018, 158 L.Ed.2d 523 (2004).

276 Conn. at 470 n. 12.

Illinois is a State that has had problems in its criminal justice system. See, e.g., Ken Armstrong & Steve Mills, Series: Tribune Investigative Report, The Failure of the Death Penalty in Illinois: A Five-Part Series, *Chicago Tribune*, Nov. 14-19, 1999. Various commissions have proposed reforms, including the giving of jury instructions regarding informants. See 2004 Annual Report Of The Committee On Criminal Law And Probation Administration To The Illinois Judicial Conference 87-88 ("During the Conference year, the Committee reconsidered its proposal to add a cautionary jury instruction on informants. The proposal would amend the existing cautionary instruction on accomplices (IPI Criminal No. 3.17) to provide that the testimony of a witness, other than an expert witness or law enforcement officer, who provides evidence against a defendant for pay, leniency, immunity from punishment, vindication or any other personal advantage is subject to suspicion and should be considered with caution.");[4] see also Report of the Governor's Commission on Capital Punishment 131.[5] Despite this, the IPI Committee has steadfastly

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[4] http://www.state.il.us/court/supremecourt/jud_conf/AnnualReport/2004/Pdf/ReportCrimLaw.pdf.

[5] http://www.idoc.state.il.us/ccp/ccp/reports/commission_report/complete_report.pdf.

refused to draft a pattern instruction on the subject of benefits conferred to informants. See IPI Criminal (4th ed.). As this case demonstrates, Illinois courts refuse to give a cautionary instruction when a State witness has received benefits since the IPI Committee has not acted. See also *People v. Askew*, 273 Ill.App.3d 798, 809, 652 N.E.2d 1041 (1995); *People v. Foster*, 199 Ill.App.3d 372, 396, 556 N.E.2d 1289 (1990); *People v. Jackson*, 145 Ill.App.3d 626, 643-44, 495 N.E.2d 1207 (1986); *People v. Columbo*, 118 Ill.App.3d 882, 976-77, 455 N.E.2d 733 (1983).

Given the frequency of informant testimony in both State and Federal criminal trials, the issue is important and recurs. Moreover, the lower courts have divided on whether a cautionary jury instruction is necessary when a prosecution witness has received benefits. This Court's decisions in *On Lee*, *Hoffa* and *Banks* necessitate an instruction in such situation. Indeed, a cautionary benefits instruction is necessary to ensure reliable jury deliberations, and a fair and impartial trial, as guaranteed by the United States Constitution.

CONCLUSION

WHEREFORE, based on the foregoing, Petitioner Charles Patton respectfully moves this Honorable Court to grant certiorari, vacate the judgment, remand for reconsideration and/or order any other appropriate relief.

Respectfully submitted,

MARC W. MARTIN*
*Counsel of Record
MARC MARTIN, LTD.
53 West Jackson Blvd.
Suite 1420
Chicago, IL 60604
(312) 408-1111

STEVEN J. WEINBERG
WEINBERG & RIZZI
53 West Jackson Blvd.
Suite 1460
Chicago, IL 60604
(312) 322-0097

Counsel for Petitioner
Charles Patton

APPENDIX A

SECOND DIVISION
July 14, 2009

No. 1-07-1625

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellee, v. CHARLES PATTON, Defendant-Appellant.	) Appeal from the) Circuit Court of) Cook County.) No. 03 CR 12526) Honorable) Dennis J. Porter,) Judge Presiding.

ORDER

Defendant Charles Patton appeals his convictions and 44-year sentence for possession of a controlled substance with intent to deliver and criminal drug conspiracy.

Following a three-month surveillance operation, defendant and several other people, including his wife and co-defendant Inita Patton, were arrested and charged with various drug related offenses.[1] Prior to trial, defendant filed a motion to suppress, arguing

[1] Co-defendant Inita Patton was acquitted of all charges and is not a party to this appeal.

that all of the evidence police recovered during the search of his house had been unlawfully seized because the officers failed to knock and announce their office before they entered his residence and conducted their search. The trial court denied defendant's motion without conducting a hearing, finding that even if defendant's allegations were true, suppression of the evidence was not an appropriate remedy for a violation of the knock-and-announce rule based on the United States Supreme Court's ruling in *Hudson v. Michigan*, 547 U.S. 586, 165 L. Ed. 2d 56, 126 S. Ct. 2159 (2006).

Thereafter, defendant and Inita elected to have a joint jury trial, where the following evidence was revealed:

Retired Chicago Police Sergeant, Robert Grapenthien, testified that police conducted a three-month surveillance investigation of defendant, which because of defendant's large stature, was referred to as "Operation Big Man." On March 24, 2003, at 6:59 p.m., police recorded a phone conversation between defendant and Jerry Warren, one of defendant's associates, during which they arranged a meeting for the following day. The following day, at 11:48 a.m., defendant told Warren to meet him in Hyde Park. Based on that information, Grapenthien directed Officers John Rawski and Homero Ramirez to establish surveillance near defendant's business in Hyde Park, Pet Spa, that defendant co-owned with Shawn Jones. Subsequently, Officer Ramirez observed Warren arrive in a black Ford pickup truck,

and remove a bag containing a box-like object from the rear of the truck when he exited. Jones then escorted Warren to a nearby hair salon where defendant was having his hair braided.

Shortly thereafter, Warren reentered his vehicle and Officer Rawski saw Jones approach the passenger side of Warren's vehicle with a brown bag under his arm. Jones got into the truck, stayed for approximately 30 seconds, and then exited empty handed. Warren then drove off, and Sergeant Grapenthien directed other surveillance officers to follow him.

Sergeant Matthew Cline and Officer Daniel Gutierrez testified that they followed Warren in his vehicle as he drove from Hyde Park to Maywood and relayed his route over the radio. Warren subsequently parked his vehicle at 2108 South Second Avenue in Maywood. Once Warren exited his vehicle, Officer Michael Fryer and his partner, Gang Specialist Michael Cronin, who were following Warren in a second surveillance vehicle, parked their vehicle and approached him. To avoid compromising the wiretap investigation, Officer Cronin informed Warren that they were investigating shootings in Maywood and asked Warren if they could search his truck for weapons, and he agreed. Officer Fryer recovered a brown plastic bag from the rear floor of Warren's vehicle, which he hid inside of his jacket, and signaled to Officer Cronin that he had recovered suspect narcotics. Officer Cronin then told Warren that he was free to leave as no weapons were found in

his vehicle. Once they returned to the police station, Officer Fryer inventoried the bag containing the suspect narcotics, and the parties stipulated that the bag contained 195.3 grams of heroin.

Police officers intercepted three phone calls between Warren and defendant following the search of Warren's vehicle. The first call, at 2:10 p.m., was not recorded because of an equipment malfunction. Warren called defendant again at 2:21 p.m., saying that the police "took the motherf* * * paint." Warren called defendant again at 2:31 p.m., expressing his concerns about the search, stating: "for them to take the paint and let me ride and don't say nothing about it." To which defendant replied, "something wrong." Officer Grapenthien played the recordings for Officer Cronin when he arrived at the police station, and he was able to positively identify Warren's voice on the tape.

Co-defendant Torrick Hall provided the bulk of the State's evidence. He acknowledged that he was arrested on May 8, 2003, and charged with various narcotics offenses. Hall further stated that he entered into a plea agreement with the State to testify against defendant in exchange for a reduced sentencing recommendation for one count of possession of more than 15 grams of a controlled substance with intent to distribute, and Hall would reserve the right to request a six-year prison term. Without the plea agreement, Hall faced a maximum sentence of 60 years' imprisonment based on all of the charges in the indictment. He was not required to testify against his

brother, Marcus Hall, who was also arrested for his role in defendant's heroin enterprise.

Hall testified that defendant's brother Dwayne introduced him to defendant. Defendant owned a music production company called 1st and 15th Productions and also sold heroin. Hall began working for defendant in the drug business in 1996 or 1997. Initially, he would go to defendant's house and tape packets of heroin that defendant had weighed, and defendant would then deliver the taped packets of heroin to various locations on the west side of Chicago. Hall was paid $400 per week for his assistance.

Less than a year prior to his arrest, Hall assumed the position of the "man at the table" in defendant's drug enterprise, meaning that he was entrusted with mixing the heroin with a mixing agent, packing the heroin, and dropping off the heroin in exchange for money. Hall mixed and packaged the heroin at his sister Sherell Lee's apartment in Calumet Park. Defendant paid the rent for Lee's apartment and provided Hall with the heroin mixing agents. Hall regularly delivered heroin to co-defendants Edmond Forrest ("Ferb"), defendant's cousin, Terrance Sanders ("Rock Lord"), Jermaine Johnson ("Goo"), Darryl Hale ("May May") and Dean Luster. Hall stated that co-defendant Warren also received heroin regularly, but he usually dealt directly with defendant. Hall would bring money to defendant approximately two to three times a week and he was paid every Sunday.

The State played 197 wiretap recordings, with Hall identifying the voices and explaining the meanings of the calls. Hall identified the voices of Wasalu Jaco, defendant's partner in his music production company, and defendant on recordings taken on February 25, 2003, and March 5, 2003. In those calls, defendant told Jaco to instruct Hall to do "a red one and a full yellow or green one." According to Hall, this meant packages of 25 grams of heroin, and the colors referred to the tape used to seal the heroin packets, which were used to indicate the recipients. Hall also identified the voices of defendant's two heroin suppliers: Ava and Ebineezer ("Abe"). Defendant talked to Ava on March 14, 2003, indicating that he would wire her money the following day. He spoke to her again on April 26, 2003, and stated that he was "getting it together for [her]." On May 2, 2003, Ava asked defendant to pick her up at Midway Airport. Hall identified the voices of defendant and Abe on calls that took place on March 15, 2003, and March 16, 2003.

Surveillance officers confirmed that defendant picked Ava up at the airport on May 2, 2003. Officer Cronin saw Ava exit the airport terminal carrying a red purse and a black suitcase and enter defendant's red Cadillac Escalade. Defendant drove her to a Greyhound bus terminal located in downtown Chicago. Officer David Hernandez observed Ava at the Greyhound bus station, still carrying the red purse, but not the black suitcase. Ava exited the bus station, reentered defendant's Escalade, and Cronin

saw her reenter the bus station carrying both the red purse and the black suitcase. She subsequently boarded a bus to Brooklyn with both items.

Hall also testified about phone calls related to several meetings that took place at a restaurant near Midway Airport. In a call on April 4, 2003, Abe told defendant that he had the "shoes," which Hall explained was a code name for heroin, and that he was at a location near the airport. Defendant and Abe also spoke on April 8, 2003, and Abe told defendant that the person defendant was going to see the following day "doesn't have anything with him." The next day, Abe gave defendant a phone number for a man named Francis. Defendant subsequently called Hall and instructed him to "take somebody something for me." He then gave Hall Francis's phone number and told him to meet him at the restaurant located near the airport. Hall stated that he followed defendant's instructions, met with Francis in the restaurant's parking lot, and gave him $10,000, which was defendant's recent drug sale proceeds. Following that exchange, Hall called defendant and confirmed that he had met with Francis. Hall was again instructed to call Francis on April 15, 2003, which he did and he again met Francis in the restaurant's parking lot and gave him another $10,000. Afterwards, Hall called defendant and said "it's done," meaning that the meeting had gone as planned and the money had been exchanged.

Hall's explanations of the calls regarding the restaurant meetings were corroborated by the

observations of surveillance officers. Following defendant's April 4, 2003, call with Abe, Officer Rawski testified that he drove to a restaurant located near Midway where he observed defendant exit the restaurant at 6:01 p.m. and enter a black Chrysler Pacifica which was in the parking lot. Another person, later identified as Terrell Harris, also exited the restaurant and entered the Pacifica. Harris was carrying a bag that contained an object shaped like a shoe box. Officer Rawski also observed the meeting between Hall and Francis in the parking lot on April 9, 2003, and Officer Michael Fryer observed and videotaped the April 15, 2003, transaction between Hall and Francis.

Hall further testified about phone conversations he had with defendant's associates, including Forrest, Luster, Hale, and Sanders between April 5, 2003, and April 15, 2003, in which he arranged heroin deliveries on defendant's behalf. Those transactions were observed by several surveillance officers including Officer Fryer, Sergeant Grapenthien, and Officer Hernandez, although Forrest, Luster, Hale, and Sanders were not detained on those occasions.

On April 17, 2003, however, surveillance officers stopped Forrest's car after he was seen meeting with Hall in a parking lot in Dolton. Sergeant Cline recovered a large bundle of rolled green tape containing 468 tin foil packets from Forrest's pocket. The parties stipulated that an expert chemist tested 150 of the packets and found them to contain 16.1 grams of heroin. In order to avoid compromising the

wiretap investigation, Sergeant Cline released Forrest. At 12:03 p.m. that same day, officers recorded a phone call from Sanders to defendant informing him of Forrest's encounter with police. Defendant in turn relayed this information to Hall at 12:12 p.m. Forrest then placed a call to Hall at 12:20 p.m., informed him of the stop and the loss of the heroin, and asked Hall to assure defendant that he would "make everything all right."

Hall continued to make heroin deliveries after Forrest's encounter with police. He arranged heroin deliveries with Luster, Hale, Sanders, and Johnson. Those transactions occurred between April 18, 2003, and April 25, 2003, and were witnessed by various surveillance officers including Sergeant Grapenthien, Officers Fryer and Ramirez. No one was stopped on those occasions.

Subsequently, on April 30, 2003, however, Officer Urbanski stopped Hale's vehicle at 11:29 p.m. after he was seen meeting with Hall at a store located near 127th Street and the I-57 expressway. When Hale was unable to produce a license, Officer Urbanski asked him to get out of his vehicle. As he did so, he threw a balled up piece of yellow tape on the floor, which Officer Urbanski recovered and then handcuffed Hale. The parties stipulated that the tape recovered by Officer Urbanski contained 234 tin foil packets, and 140 of the packets were tested and contained 15.3 grams of heroin. At 1:42 p.m., Hale placed a call to Hall from the police station, informed Hall of his arrest, and asked Hall to "tell Big Fella to

reach for me." Hall, in turn, called defendant and informed him of Hale's arrest.

Hall made other deliveries after Hale's arrest: on May 2, 2003, and May 6, 2003, he delivered heroin to Sanders, and on May 3, 2003, and May 5, 2003, Hall delivered heroin to Luster. Those transactions were observed by various surveillance officers including Officers Hernandez and Christopher Wilson; however, no one was stopped on those occasions.

In addition to providing evidence about various meetings and drug transactions, the State presented evidence about defendant's and Inita's acquisition and use of a storage locker. Anthony Scott Wilson, a makeup artist at the salon Inita frequented, testified that Inita, defendant, their children, and Hall arrived at his apartment on March 25, 2003, at approximately 6:30 p.m. Hall was carrying a black bag, and Inita told Wilson that the bag contained CD's that she wanted to put into storage. Wilson explained that he and Inita previously discussed renting a storage unit together because his new apartment was small and did not have enough space for his belongings. After staying in Wilson's apartment for a short time, everyone left and returned to defendant's home; however, the bag remained at Wilson's apartment and Wilson spent the night at defendant's home.

The following day, Wilson and Inita returned to Wilson's apartment, where he boxed up some of his belongings and put the boxes and the black bag into Inita's vehicle. Wilson never looked inside the black

bag. They then drove to a storage facility located near defendant's home, but by the time they arrived, the facility was closed. Wilson and Inita returned to defendant's home, where Wilson again spent the night. The following morning, Wilson and Inita returned to the storage facility. Inita gave Wilson money to rent a storage locker and Wilson was assigned to locker 416. Wilson and Inita then unloaded his boxes and the black bag into locker 416. When they were finished, Wilson gave Inita the keys to the unit as well as the code to open the gate to the facility. Wilson never looked inside of the black bag.

The next time Wilson went to the storage facility was on May 1, 2003. He drove there with Inita, but the facility was already closed. Accordingly, Wilson, Inita, and defendant drove to the facility the next morning when it opened. Wilson and defendant removed some items from the storage locker at that time, including a yellow envelop [sic] from the black bag.

On May 8, 2003, as a result of their surveillance efforts, police obtained and executed several search warrants. Officers Patrick Ford and Fryer, and Sergeant Grapenthien were assigned to execute a search of Sherell Lee's residence. Hall opened the door to Lee's residence, and was immediately detained by Officer Ford. He recovered 250 tin foil packets of heroin wrapped in yellow tape from Hall's person, which the parties stipulated contained 15.3 grams of heroin. Thereafter, Ford asked Hall if there were additional narcotics in the apartment and Hall directed the officers to the kitchen closet. Officers

Ford and Fryer recovered a green Adidas bag containing four large knotted bags containing 394.8 grams of heroin. Officer Ford also recovered a cell phone box containing 297.9 grams of powdered heroin. Two additional bags containing 33 grams of heroin were recovered by Officer Fryer from the kitchen closet. In addition to the drugs, Officer Ford found a shoe box containing scissors, tin foil, plastic bags, and colored tape at Lee's residence. He also found a grinder, a scale, spoons and containers of quinine, Super Lactose, and Dormin, which are mixing agents for heroin.

Marcus Hall, Torrick Hall's brother, was also present during the search of Lee's residence. Sergeant Grapenthien recovered $1,100 from his person and an additional $1,100 from his vehicle. Marcus also agreed to allow police to search his residence in University Park. Once police arrived at there, Sergeant Grapenthien recovered a .9 mm pistol from Marcus's bedroom, as well as a small security box containing several bags of white powder. The parties stipulated that the bags contained 171.5 grams of heroin.

After his arrest, police took Torrick Hall to his residence in Dolton, where another team was already conducting a search. Officer Gregory Whitmore recovered two plastic bags containing white powder and two green rolls of tape containing foil packets inside a golf bag in the garage. One roll contained 302 packets and the other roll contained 200 foil packets. The parties stipulated that the two bags contained

110.2 grams of heroin, the 302 packets contained 33 grams of heroin, and the 200 packets contained 21.9 grams of heroin. Two guns were also recovered from a car in Hall's garage. Officer Christopher Wilson searched Hall's bedroom and recovered a .9 mm pistol and two lockboxes. A larger lockbox contained approximately $26,000 while a smaller one held approximately $9,000.

Officer Cronin was part of the team assigned to search defendant's residence, and he initially pounded on the door and yelled, "police, search warrant" twice, but got no response. Police then made a forced entry into defendant's home and Officer Cronin saw defendant in the hallway with a handgun in his right hand. He ordered defendant to drop his weapon, to which he complied by tossing the weapon into a nearby bedroom, and then lay on the floor. After handcuffing defendant, Officer Cronin recovered the weapon, which was a loaded .40 caliber Smith and Wesson automatic handgun.

Officer Charles Honore confirmed that police knocked on defendant's front door and announced their office prior to forcing entry into defendant's residence. After defendant was handcuffed, he was asked whether there were any other weapons in the residence. Defendant responded affirmatively, and directed the officers to the master bedroom closet. Officer Honore recovered a .9 mm handgun from the master bedroom closet, and also two cell phones from defendant's residence.

Internal Revenue Agent Patricia Nevin testified that she also participated in the search of defendant's residence. She recovered two handguns from the master bedroom closet, but did not recover any drugs or money from defendant's bedroom.

Sergeant Charles Daley searched defendant's basement, where he recovered 24 full bottles and 2 empty bottles of Super Lactose from a counter in the basement. Two books were located near the lactose bottles: "Cocaine, An Unauthorized Biography" and "Opium, A History." Sergeant Daley did not find any drugs or money in the basement and the lactose bottles were not sent for fingerprint analysis.

Sergeant Daryl Spencer recovered a purse from defendant's bedroom, which contained a set of keys. Those items were placed on the kitchen table, along with all of the other recovered evidence.

Sergeant Grapenthien went to defendant's house after he finished searching Marcus Hall's residence. He observed three keys next to a woman's purse on the kitchen table, all of which were identical and marked with the same number and letters. Sergeant Grapenthien believed that they were keys to a storage locker, and took them to the police station. He reviewed phone calls recorded on May 1, 2003, and May 2, 2003, between defendant and Inita, where defendant directed her to go to a storage facility. The calls showed that Inita went to the facility, but arrived too late to access the storage locker, and she informed defendant that the facility opened at 7 a.m.

and closed at 8 p.m. Using this information, police discovered that Glenwood Storage Facility had those hours of operation and was located near defendant's home. Grapenthien provided Special Agent Chris Carlson with a key and the address to the Glenwood Storage Facility.

At approximately 5:30 p.m., Special Agent Carlson went to the Glenwood Storage Facility, where he met Sergeant Brian Sudlow of the Glenwood police department. For approximately 30 minutes, Carlson tried to fit the key into various lockers located in the facility, until discovering that the key opened locker unit 416. Carlson opened the unit an inch or two and immediately closed the door and relocked the unit. He called Sergeant Grapenthien and told him that he had located the storage locker.

Officer Grapenthien, in turn, relayed that information to Inita, who was being questioned by Officer Whitmore. After learning that police had located the storage locker, Inita inquired, "I'm not going to be charged with that stuff, am I?"

At approximately 11 p.m., Special Agent Carlson received a search warrant for locker 416 and returned to the storage facility. After opening the locker, Carlson observed a chair, lamps, and salon equipment. He also discovered a black duffel bag inside of a loosely taped cardboard box. The duffel bag contained a red plastic bag, which held 63 smaller plastic bags. The parties stipulated that 16 of the 63 bags were subjected to chemical analysis and contained 1,575.3

grams of heroin. After presenting testimony about the evidence seized by police, the State rested its case.

Inita presented no evidence. Several witnesses, however, testified on defendant's behalf. Greg Magers, a recording engineer, testified that he worked with defendant in the music industry several times over the years. Magers never saw heroin at defendant's music studio, nor did he ever see any heroin transactions occur. Defendant's studio used a unique rainbow filing system to color code each music file; specifically, the studio used red, yellow, and green files. Magers acknowledged, however, that the expression "half of a yellow" did not make sense to him, but indicated that defendant and Jaco had a unique way of conversing.

Wasalu Jaco testified that he is the co-owner and vice president of 1st and 15th Entertainment. A Grammy nominated rapper who goes by the stage name "Lupe Fiasco," Jaco indicated that he met defendant for the first time in 1998 at Terrell Harris's recording studio and commenced a business relationship with him in 1999. Jaco was played several intercepted wire tap conversations, wherein the phrases "a red one, a full yellow or a green one" were used. Jaco explained that these were references to the rainbow filing system that the studio utilized. Jaco further explained that the terms "whole" or "half" described the manner in which instruments were recorded on music tracks. When each instrument is recorded separately, this refers to the whole process of tracking music and when the instruments were

bundled together onto one or two tracks of music, this was referred to as the half process of tracking music. Jaco indicated that he never bagged, sold, or used heroin, and never saw defendant mix, sell, or receive heroin. Torrick Hall would often stop by the studio, but Jaco was unaware that Hall was a heroin dealer. Jaco acknowledged that he was arrested on May 8, 2003, after leaving defendant's Olympia Fields residence, but explained that he frequently spent time at defendant's home, and kept 12 or 15 of his books there, including the books about cocaine and opium that police seized from defendant's home. When defendant was arrested, Jaco bailed him out of jail with the proceeds from a recording deal.

Dwayne Patton, defendant's brother, testified that defendant and Hall did not know each other in 1996 or 1997, and Hall did not begin bagging heroin for defendant at that time. According to Dwayne, defendant had been incarcerated in 1996, was under house arrest until early 1997, and was not involved in the heroin trade. In 2000, defendant worked as a music producer and would throw parties for musicians and African diplomats. Dwayne stated that defendant regularly threw parties for a man named Abe, who would pay defendant approximately $40,000 per party. Ava procured women from New York to attend the parties, and he and Hall also obtained women for the parties that defendant hosted.

Terell Harris testified that he was a music producer whose nickname was "Shorty Capone." He

confirmed that defendant threw parties for Abe and that defendant contacted Ava to supply women for the parties. Harris acknowledged that police surveillance footage showed he and defendant at a restaurant located near Midway Airport on April 4, 2003, but explained that they were there to meet Abe, but Abe never arrived. Harris stated that he carried a white bag into the restaurant, but denied that the bag contained heroin. Rather, Harris stated that the bag contained condoms and sex toys for Abe's party.

In rebuttal, Officer Cronin testified that he conducted surveillance on April 4, 2003, and saw defendant and Harris arrive at the restaurant. Neither defendant nor Harris carried any bag into the restaurant, but Harris left with a bag.

The jury found defendant guilty of one count of criminal drug conspiracy involving 900 or more grams of heroin and one count of possession with intent to distribute 900 or more grams of heroin. The jury acquitted Inita of all charges. Defendant filed a posttrial motion seeking acquittal or a new trial due to a number of purported trial errors, but the trial court denied his motion in its entirety. Following a sentencing hearing, the trial court sentenced defendant to 44 years' imprisonment.

Defendant raises the following issues for our consideration: (1) whether the trial court violated his right to a fair and impartial trial; (2) whether the trial court erred in admitting a post-arrest statement of his co-defendant; (3) whether the trial court erred

in admitting various evidence at trial; (4) whether the trial court erred in refusing to give his proposed jury instruction; (5) whether the trial court erred in denying his motion to suppress without conducting an evidentiary hearing; (6) whether he was proven guilty beyond a reasonable doubt; and (7) whether the trial court abused its discretion in imposing his sentence.

Defendant first contends that the trial court violated his right to a fair and impartial trial when it refused to *voir dire* prospective jurors about any bias they might possess about firearms. He observes that four jurors indicated that they had been a victim of a crime and one juror revealed that a close friend had been a crime victim, and contends that it was necessary to question the jurors about their feelings toward firearms because trial testimony revealed that defendant had been armed with a loaded handgun at the time of his arrest. Defendant acknowledges that he failed to properly preserve this issue for appellate review because he did not challenge the *voir dire* in his posttrial motion, but urges this court to review his claim pursuant to the plain error doctrine.

To properly preserve an issue for appeal, a defendant must object to the purported error both at trial and in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The plain error doctrine, however, provides a limited exception to the waiver rule and allows for review of otherwise improperly preserved issues on appeal if the evidence is closely balanced or

the error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. 134 Ill. 2d. R. 615(a); *Bannister*, 232 Ill. 2d at 65. Because a defendant's right to a fair trial before an impartial jury is an issue of constitutional magnitude, we will review his claim for plain error. *People v. Dixon*, 382 Ill. App. 3d 233, 244 (2008). The first step in plain error analysis is to determine whether any error actually occurred. *Bannister*, 232 Ill. 2d at 65.

Every criminal defendant has a constitutional right to a jury trial comprised of impartial jury members. Ill. Const. 1970, art. I, § 13; *People v. Gregg*, 315 Ill. App. 3d 59, 65 (2000). "*Voir dire* serves the dual purpose of enabling the trial court to select jurors who are free from bias or prejudice and ensuring that attorneys have an informed and intelligent basis on which to exercise their peremptory challenges." *Gregg*, 315 III. App. 3d at 65. The trial court is primarily responsible for conducting the *voir dire*. *People v. Metcalf*, 202 Ill. 2d 544, 552 (2002); *People v. Karim*, 367 Ill. App. 3d 67, 91 (2006). While the trial court is required to inquire about a juror's acceptance of the constitutional principles pertaining to the presumption of innocence, the State's burden of proof, and the defendant's right not to testify or present evidence, (Official Reports Advance Sheet No. 8 (April 11, 2007), R. 431(b), eff. May 1, 2007; *People v. Gilbert*, 379 Ill. App. 3d 106, 110 (2008)), the overall scope of the questions asked during the *voir dire* process remains within the

discretion of the trial court (*People v. Williams*, 164 III. 2d 1, 16 (1994); *Gregg*, 315 Ill. App. 3d at 65)). Accordingly, the trial court has no duty to *sua sponte* ask potential jurors questions to ascertain a specific kind of bias. See, *e.g.*, *People v. Macias*, 371 Ill. App. 3d 632, 640-41 (2007) (trial court has no duty to make *sua sponte* inquiries to ascertain gang bias); *People v. Diggs*, 243 Ill. App. 3d 93, 96 (1993) (trial court has no duty to make *sua sponte* inquiries to ascertain racial bias). A trial court abuses it discretion in conducting a *voir dire* only if the record reveals that its conduct thwarted the selection of an impartial jury. *Metcalf*, 202 Ill. 2d at 559; *Williams*, 164 Ill. 2d at 16.

Here, the trial court oversaw the *voir dire* process and conducted the initial questioning of the prospective jurors. The court did not question the venire about their attitudes about firearms; however, the attorneys were permitted to supplement its questioning with inquiries of their own. Defense counsel did not request that the trial court ask the prospective jurors about any biases they might possess about handguns and did not object to the scope of the trial court's questioning. The trial court was not required to *sua sponte* question the venire about their attitudes toward firearms and we do not find that the trial court abused its discretion by failing to do so. Accordingly, we conclude that there was no error and defendant's right to a fair and impartial trial was not violated.

Defendant next contends that the trial court erred in admitting Inita's post-arrest statement in which she stated that she was aware of the contents of the storage locker. He asserts that this statement implicated him of wrongdoing, and thus the trial court should have granted his motion for severance.

The trial court's decision to grant a defendant's motion for severance is a matter of discretion. *People v. James*, 348 Ill. App. 3d 498, 507 (2004). Generally, persons who are indicted together should be tried together unless a separate trial is necessary to avoid prejudice. *People v. Mahaffey*, 165 Ill. 2d 445, 469 (1995); *James*, 348 Ill. App. 3d at 507. Although a defendant must move for severance prior to trial and show the trial court how a joint trial will prejudice him, the trial court remains under a continuing duty throughout the trial to grant severance if prejudice appears. *People v. Spain*, 285 Ill. App. 3d 228, 232 (1996).

Prejudice occurs in a joint trial when a hearsay statement from a non-testifying codefendant is admitted that either expressly (*Bruton v. United States*, 391 U.S. 123, 237, 20 L. Ed. 2d 476, 485-86, 88 S. Ct. 1620, 1628 (1968); *People v. Duncan*, 124 Ill. 2d 400, 409-10 (1988)) or implicitly implicates the defendant in the charged offense (*People v. Williams*, 182 Ill. 2d 171, 187 (1998); *Duncan*, 124 Ill. 2d at 410). Accordingly, when such a statement is at issue, the trial court must either grant a party's motion for severance, prevent use of the statement, or redact the

statement to eliminate any reference to the defendant. *Spain*, 285 Ill. App. 3d at 232.

Here, neither defendant nor Inita moved for severance prior to the start of their joint trial. Rather, defendant moved for severance when the trial court, over his objection, permitted Officer Whitmore to testify that when Inita was informed that police had found the storage locker that was later found to contain a duffel bag full of heroin, she responded, "I'm not going to be charged with that stuff, am I?" The court provided the jury with a limiting instruction, informing them that Inita's statement could not be considered against defendant; rather, it was admitted only against her. In denying defendant's motion for severance, the court reasoned that Inita's statement did not mention or implicate defendant. We agree with the trial court. Inita did not refer to defendant or any other person in her statement. She did not offer an explanation for or explain her involvement in any wrongdoing; rather, she simply asked a question. Moreover, the evidence at trial showed that three keys were issued to the locker and Anthony Scott Wilson filled out the paperwork for, and stored his belongings in, the locker. Accordingly, Inita's statement would not require the jury to draw the inescapable conclusion that she was implicating defendant in any wrongdoing. *Cf. Williams*, 182 Ill. 2d at 187 (finding that defendant's right to confrontation was violated when the trial court admitted a detailed confession of his codefendant because the context of the confession "rendered it impossible to

conclude that the other person to whom [the codefendant] referred was anyone other than the man seated next to him in the courtroom"). We therefore find that the trial court did not abuse its discretion in denying defendant's motion for severance.

Next, defendant asserts that the trial court erred in admitting certain evidence at trial. Specifically, he contends that the trial court erred in admitting: (1) testimony that defendant had been engaged in heroin sales since 1996; (2) testimony that firearms were recovered from defendant's home; (3) testimony that books about drugs were recovered from defendant's home; and (4) wiretap recordings between defendant and Inita.

The trial court is afforded considerable discretion to determine whether evidence is relevant and admissible. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001); *People v. Figueroa*, 381 Ill. App. 3d 828, 840-41 (2008). Evidence is relevant if it has tendency to make the existence of any relevant fact either more or less probable. *Morgan*, 197 Ill. 2d at 455-56. Ultimately, a trial court's decision concerning the relevancy and admissibility of evidence will not be reversed absent an abuse of discretion. *Morgan*, 197 Ill. 2d at 455; *Figueroa*, 381 Ill. App. 3d at 841.

Defendant initially contends that the trial court erred in allowing Hall to testify that he began working for Patton in the heroin business in 1996 or 1997. He argues that the bill of particulars filed by the State specified that charged offenses occurred

between December 26, 2002, and March 25, 2003. Accordingly, he contends the trial court erred in admitting Hall's testimony because it varied from the dates set forth in the bill of particulars.

When an indictment fails to sufficiently inform a defendant of the specifics of a charged offense, the trial court may require the State to file a bill of particulars in accordance with section 111-6 of the Criminal Code of 1963 (Code) (725 ILCS 5/111-6 (West 2006)). *People v. Woodrum*, 223 Ill. 2d 286, 301 (2006). The purpose of the bill of particulars is to enable a defendant to better prepare his defense by more fully informing him of the nature of the charges against him. *Woodrum*, 223 Ill. 2d at 301-02; *People v. Paik*, 257 Ill. App. 3d 620, 624-25 (1993). When a bill of particulars is filed by the State, section 111-6 of the Code requires the State to confine its evidence to the particulars of the bill. 725 ILCS 5/111-6 (West 2006). However, "a bill of particulars limits the evidence only as to the matters it purports to particularize and does not limit the introduction of evidence tending to prove such matters." *People v. Kliner*, 185 Ill. 2d 81, 138 (1998). Accordingly, any evidence that tends to prove the transactions identified in the bill of particulars is admissible. *Kliner*, 185 Ill. 2d at 138. For that reason, when a defendant faces a conspiracy charge, the trial court does not err in admitting statements made by the defendant or his codefendant before conspiracy dates identified in the bill of particulars, because the preoffense evidence lays a foundation for the conspiracy charge. *Kliner*, 185 Ill.

2d at 139. Ultimately, a minor inconsistency between the information contained in the bill of particulars and the evidence elicited at trial is not fatal and does not constitute reversible error if the defendant is not misled and cannot demonstrate any prejudice resulting from the variation. *Kliner*, 185 Ill. 2d at 138; *Pak*, 257 Ill. App. 3d at 625.

Here, defendant's indictment charged him with counts of: (1) criminal drug conspiracy from December 26, 2002, to May 8, 2003; (2) delivery of a controlled substance on or about March 25, 2003; and (3) possession of a controlled substance with intent to distribute on or about May 8, 2003. Thereafter, the State filed a bill of particulars reiterating that defendant's alleged criminal activity occurred on or about December 26, 2002, and continued until May 8, 2003. At trial, Hall provided evidence that corresponded to the dates identified in defendant's indictment as well as in the bill of particulars, including testimony about telephone calls and events that occurred during the relevant time period. In addition to these events, Hall also explained how he first began working for defendant in 1996 or 1997. Although Hall's testimony about the start his working relationship with defendant falls outside of the scope of the bill of particulars, we do not find that the trial court erred in allowing this testimony because it laid a foundation for the conspiracy charge. *Kliner*, 185 Ill. 2d at 139. In addition, as the trial court noted, Hall's statements did not constitute a surprise to defendant because he had been tendered

pretrial discovery regarding the nature and scope of Hall's testimony. *Kliner*, 185 Ill. 2d at 139.

Defendant next challenges the trial court's decision to allow the State to introduce evidence that firearms were recovered from his residence and that he was personally armed with a firearm at the time of his arrest. He contends the court's ruling constitutes an abuse of discretion because there was no evidence that he possessed firearms during the course of the conspiracy and investigation; thus, this evidence was unduly prejudicial.

"The longstanding rule in Illinois is that '[a] weapon generally may not be admitted into evidence unless there is proof to connect it to the defendant and the crime or unless the defendant possessed the weapon when arrested for the crime.'" *People v. Evans*, 373 Ill. App. 3d 948, 960 (2007), quoting *People v. Maldonado*, 240 Ill. App. 3d 470, 478 (1992). Certain offenses, such as possession of a controlled substance with intent to deliver, are seldom amenable to direct proof, and accordingly must be proved circumstantially. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995); *People v. Dockery*, 248 Ill. App. 3d 59, 69 (1993). A defendant's "possession of weapons is one of many factors Illinois courts consider as probative of intent to deliver," and admission of weapons evidence in such cases is proper. *People v. Bui*, 381 Ill. App. 3d 397, 423 (2008).

Here, the State presented substantial testimony about the evidence police recovered during the search

of defendant's residence and storage locker, which included multiple bottles of heroin mixing agents, reading material about illegal narcotics, and a duffel bag full of heroin. In addition, the trial court permitted the State to introduce evidence that police recovered four weapons during the search of defendant's residence. The trial court's ruling was correct as the weapons were relevant because they supported the inference that defendant possessed an intent to deliver heroin. *Bui*, 381 Ill. App. 3d at 423; *Dockery*, 248 Ill. App. 3d at 70. Moreover, defendant was armed with one of the weapons at the time of his arrest, and accordingly, details about the weapon was properly admitted into evidence. *Evans*, 373 Ill. App. 3d at 960. We therefore find that the trial court did not err in ruling on the admissibility of the weapons evidence.

Defendant also contends that the trial court erred in admitting two books about narcotics that were recovered during the search of his residence. He argues that Jaco testified that he owned the books and that there was no evidence that he read them. Accordingly, defendant contends that the admission of the books into evidence was irrelevant and prejudicial.

Physical evidence is properly admitted into evidence as long as there is proof to connect the evidence with the defendant and the crime with which he is charged. *People v. Pulliam*, 176 Ill. 2d 261, 276 (1993); *People v. Hampton*, 307 Ill. App. 3d 464, 476 (1999). The relevance of a book depends, in

part, on the circumstances in which it is recovered. *Pulliam*, 176 Ill. 2d at 276.

Here, the trial court admitted into evidence two books that police recovered when they searched his residence: "Opium: A History" and "Cocaine, An Unauthorized Biography." Although defendant's business partner claimed ownership of the books, the books were found in defendant's basement next to 24 bottles of lactose, a mixing agent known to dilute heroin. While there was no evidence that defendant actually read the books, the presence of the books about narcotics in defendant's house next to heroin mixing agents was probative of criminal intent as the books were about illegal narcotics and defendant was charged with criminal drug conspiracy and possession of a controlled substance with intent to deliver. Based on the circumstances in which the books were recovered, we do not find that the trial court abused its discretion in allowing the State to introduce the books into evidence.

Defendant next contends that the trial court erred in admitting a series of wiretapped conversations between he and Inita on May 1, 2003, regarding the storage facility. Specifically, he argues that the trial court erred in finding that the marital privilege did not apply to the conversations because they were admissible pursuant to the co-conspirator exception to the hearsay rule.

The marital privilege, codified in section 115-16 of the Code, provides:

> "In criminal cases, husband and wife may testify for or against each other. Neither, however, may testify as to any communication or admission made by either of them to the other or as to any conversation between them during marriage, except in cases in which either is charged with an offense against the person or property of the other, in case of spouse abandonment, when the interests of their child or children or of any child or children in either spouse's care, custody, or control are directly involved, when either is charged under Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 and the victim is a minor under 18 years of age in either spouse's care, custody, or control at the time of the offense, or as to matters in which either has acted as the agent of the other." 725 ILCS 5/115-16 (West 2002).

The marital privilege is designed to preserve the sanctity of the marital relationship and promote family harmony. *People v. Hall*, 194 Ill. 2d 305, 336 (2001). Because the marital privilege expressly applies to confidential communications between spouses, "one in whose presence a communication between spouses is made may testify to that conversation, even though the witness overheard the conversation by eavesdropping" unless the eavesdropping is due to the betrayal of one spouse. *People v. Simpson*, 68 Ill. 2d 276, 280 (1977). The marital privilege does not contain an exception that allows spouses engaged in a joint criminal enterprise to

testify against one other (*People v. Krankel*, 105 Ill. App. 3d 988, 991 (1982)); however, when a spouse acts as an agent of the other during the course of a crime, then the marital privilege does not apply (*People v. Saunders*, 288 Ill. App. 3d 523, 526 (1997)). A violation of the marital privilege does not mandate reversal; rather, such an error is harmless when the same facts are proven by other evidence. *People v. Layne*, 286 Ill. App. 3d 981, 990 (1997).

Notably, neither defendant nor Inita took the stand to testify against each other; rather, the conversations admitted at trial derived from conversations to which neither spouse agreed to have recorded. *Cf. People v. Dubanowski*, 74 Ill. App. 3d 809, 810-12 (1979) (police officers who overheard conversation between defendant and wife through eavesdropping device were precluded by marital privilege from testifying to the contents of the conversation because wife agreed to permit officers to use the device to record her husband make incriminating statements). Moreover, the May 1, 2003, conversations introduced by the State showed that Inita acted as defendant's agent when she followed defendant's directions and took trips to the storage facility and, accordingly, fell within the agency exception to the marital privilege. See *Saunders*, 288 Ill. App. 3d at 526 (finding that the conversations between the wife and husband where wife acted at husband's direction fell within agency exception to marital privilege). Specifically, in a conversation that took place at 5:40 p.m., defendant

discussed going to the "thing you have keys to" and instructed Inita to call him when she got there. Later at 6:47 p.m., Inita told defendant that she was at Scott's house, and that "we just gettin' a couple of things for storage, it ain't much." Inita called defendant at 9:17 p.m., and informed him that she just arrived at "the storage bin a few minutes ago," but that it had closed at 8 p.m and would reopen at 7 a.m. the following morning. Defendant then instructed her to come back "to the house." Further, even if these conversations fell within the scope of the marital privilege, we find the admission of such evidence to be harmless as Wilson provided testimony about the acquisition and use of the storage facility, including a trip to the facility that he took with Inita on May 1, 2003, when the facility was closed. See *Layne*, 286 Ill. App. 3d at 990 (recognizing that a violation of the marital privilege is harmless when the same facts are proven by other evidence). It follows then that the trial court did not err in admitting the recorded conversations between defendant and his wife as evidence at trial.

Defendant next asserts that the trial court erred in refusing to provide the jury with a non-Illinois Pattern Jury Instruction (IPI) specifically informing it to consider the benefits that Torrick Hall received in exchange for his testimony.

The purpose of jury instructions is to provide the jury with clear and accurate legal principles so that it may reach a correct conclusion based on the law and the evidence presented at trial. *Bannister*, 232 Ill. 2d

at 81. Accordingly, due process requires the trial court "to instruct the jury on basic matters such as the elements of the offense, the presumption of innocence, and the burden of proof." *People v. Green*, 225 Ill. 2d 612, 622 (2007). Illinois Supreme Court Rule 451(a) directs courts to use an applicable IPI instruction in a criminal case "unless the court determines that it does not accurately state the law." 210 Ill. 2d R. 451(a); *Green*, 225 Ill. 2d at 624-25. This requirement exists because "Illinois pattern instructions were 'painstakingly drafted with the use of simple, brief, unslanted language so as to clearly and concisely state the law,' and for that reason, the use of additional instructions on a subject already covered by the IPI would defeat the goal that all instructions be brief, impartial and free from argument.'" *People v. Pollock*, 202 Ill. 2d 189, 210 (2002), quoting *People v. Haywood*, 82 Ill. 2d 540, 545 (1980). However, in cases where no relevant IPI instruction exists, then the trial court may, in its discretion, provide the jury with a non-TI instruction that is "simple, brief, impartial, and free from argument." 210 Ill. 2d R. 451(a); *People v. Hudson*, 222 Ill. 2d 392, 399 (2006). A reviewing court will reverse a trial court's determination about which instructions to tender to the jury only if the trial court abused its discretion. *People v. Mohr*, 228 Ill. 2d 53, 66 (2008). An abuse of discretion occurs if the "'jury instructions are not clear enough to avoid misleading the jury.'" *Mohr*, 228 Ill. 2d at 66, quoting *In re Timothy H.*, 301 Ill. App. 3d 1008, 1015 (1998).

Here, at the jury instruction conference, defendant requested the trial court to tender the following non-IPI instruction to the jury:

> "You have heard testimony from Torrick Hall who: (a) received immunity; that is, a promise from the government that any testimony or other information he/she provided would not be used against him/her in a criminal case; and (b) received benefits from the government in connection with this case, namely he has signed a plea agreement in which the government has promised to recommend a sentence of 10 years; and (c) has pleaded guilty to an offense arising out of the same occurrence for which defendant is now on trial. You may give his/her testimony such weight as you feel it deserves keeping in mind that it must be considered with great caution and great care."

The trial court, however, declined to do so because "[defendant's proposed instruction] was argumentative and it single[d] out a witness too much." Instead, the trial court provided the jury with two IPI instructions concerning the believability of witnesses, IPI Criminal 4th No. 1.02 and No. 3.17 (IPI Criminal 4th No. 1.02; IPI Criminal 4th No. 3.17). IPI Criminal 4th No. 1.02 states as follows:

> "Only you are the judges of the believability of the witnesses and the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and

> opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have and the reasonableness of his testimony considered in light of all the evidence in the case." IPI Criminal 4th No. 1.02.
>
> IPI Criminal 4th No. 3.17 provides as follows:
>
> "When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in the light of all the other evidence in the case." IPI Criminal 4th No. 3.17.

In this case, we find that the trial court did not err in refusing to tender defendant's non-IPI instruction to the jury. Hall's plea agreement was significantly highlighted during the course of defendant's trial. Additionally, the two IPI instructions that the trial court tendered sufficiently informed the jury of the considerations to take into account when evaluating Hall's testimony and were a correct statement of the law. See, *e.g.*, *People v. Askew*, 273 Ill. App. 3d 798, 809 (1995) (finding that the trial court did not err in failing to tender a non-IPI instruction specifically directing the jury to consider the promises a witness made in exchange for his testimony because the trial court provided the jury with IPI instructions 1.02 and 3.17 and thus "sufficiently informed the jury of its duty regarding the testimony of an accomplice witness"). Accordingly,

we conclude that the trial court did not abuse its discretion in refusing to tender defendant's proffered non-IPI instruction to the jury.

Defendant next contends that the trial court erred in denying his motion to suppress evidence without conducting an evidentiary hearing. He argues that suppression was warranted because police failed to knock and announce their presence prior to entering and searching his residence. Defendant acknowledges the United States Supreme Court's decision in *Hudson v. Michigan*, 547 U.S. 586, 599, 165 L. Ed. 2d 56, 71, 126 S. Ct. 2159, 2168 (2006) holding that suppression of evidence was not warranted for violations of the knock-and-announce rule under the fourth amendment, and also acknowledges that our supreme court reaffirmed its commitment to the limited lockstep approach to federal search and seizure jurisprudence in *People v. Caballes*, 221 Ill. 2d 282, 313 (2006). Nonetheless, he argues that the limited lockstep approach does not apply to remedies and, accordingly, suppression was warranted in his case.

A trial court's ruling on a motion to suppress is subject to a two-prong standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008); *People v. Morgan*, 388 Ill. App. 3d 252, 259 (2009). The trial court's factual findings are reviewed for clear error and will only be reversed if they are against the manifest weight of the evidence. *Cosby*, 231 Ill. 2d at 271; *Morgan*, 388 Ill. App. 3d at 259. However, the trial court's ultimate ruling on whether suppression is

warranted is subject to *de novo* review. *Cosby*, 231 Ill. 2d at 271; *Morgan*, 231 Ill. 2d at 259.

The right to be free from unlawful searches and seizures is protected by both the federal and state constitutions. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Our supreme court has held that article I, section 6 of the Illinois state constitution is to be interpreted in limited lockstep with the fourth amendment. *Caballes*, 221 Ill. 2d at 313. Pursuant to the limited lockstep approach, Illinois courts are directed to "'look first to the federal constitution, and only if federal law provides no relief [will they] turn to the state constitution to determine whether a specific criterion – for example, unique state history or state experience – justifies departure from federal precedent.'" *Caballes*, 221 Ill. 2d at 309, quoting L. Friedman, The Constitutional Value of Dialogue and the New Judicial Federalism, 28 Hastings Const. L.Q. 93, 104 (2000).

In *Hudson*, 547 U.S. at 599, 165 L. Ed. 2d at 71, 126 S. Ct. at 2168, the Court held that suppression of evidence was not a remedy for a violation of the knock and announce requirement under the federal constitution. Given the Illinois Supreme Court's continued adherence to the limited lockstep doctrine (*Caballes*, 221 Ill. 2d at 313), Illinois courts have recognized that suppression of evidence for a violation of the knock-and-announce rule would not likely be warranted because our supreme court would adhere to the *Hudson* decision as there is nothing to justify

departure from federal precedent (see *People v. Chapman*, 379 Ill. App. 3d 317, 325 (2007)).

Here, after reviewing federal and state precedent, the trial court denied defendant's motion to suppress without conducting an evidentiary hearing, finding that even if defendant's allegations were true, a violation of the knock-and-announce rule would not warrant suppression of the evidence seized during the search of his residence. We do not find that the trial court erred in denying defendant's motion to suppress. *Hudson*, 547 U.S. at 599, 165 L. Ed. 2d at 71, 126 S. Ct. at 2168; *Chapman*, 379 Ill. App. 3d 325.

Next, defendant asserts that the State failed to prove him guilty of criminal drug conspiracy and possession of a controlled substance with intent to deliver beyond a reasonable doubt. Specifically, he contends that Hall's testimony was insufficient evidence of his guilt because his testimony was provided in exchange for a lenient plea agreement and was contradicted by other evidence.

Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not the reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable

doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). "Although 'the testimony of an accomplice witness has inherent weaknesses and should be accepted only with caution and suspicion,' such testimony 'whether corroborated or uncorroborated, is sufficient to sustain a criminal conviction if it convinces [the trier of fact] of the defendant's guilt beyond a reasonable doubt.'" *Bannister*, 378 Ill. App. 3d at 40, quoting *People v. Tenney*, 205 Ill. 2d 411, 429 (2002).

To sustain a conviction for criminal drug conspiracy, the State must prove: (1) the defendant agreed with another person to commit an offense set forth in sections 401, 402, or 407 of the Act; and (2) the defendant or his coconspirator committed an act in furtherance of the agreement. 720 ILCS 570/405.1(a) (West 2002); *People v. Garth*, 353 Ill. App. 3d 108, 113 (2004). Here, the underlying offense was possession of a controlled substance with intent to deliver, which is set forth in section 401 of the Act (720 ILCS 5701401 (West 2002)).

At trial, Hall testified that he had an agreement with defendant to sell heroin. He provided detailed testimony about defendant's heroin enterprise and

the various roles he assumed over the years. Hall also discussed the heroin transactions that he undertook on defendant's behalf, including the identification of others involved in the business. Although Hall acknowledged that his testimony was delivered in exchange for the plea agreement offered by the State, the jury apparently concluded that his testimony was credible. Additionally, Hall's testimony was corroborated by the evidence. During a three-month surveillance operation, police recorded a number of incriminating conversations, observed a number of drug transactions, and recovered large quantities of heroin and drug proceeds from searches of defendant's residence and those of his associates. The police also recovered weapons, bottles of heroin mixing agents, and books about illegal drugs from defendant's residence, as well as a large quantity of drugs from a storage facility. Viewing this evidence in the light most favorable to the State, we conclude that the evidence was sufficient to support defendant's conviction for criminal drug conspiracy premised on possession of a controlled substance with intent to deliver.

Finally, defendant argues that the trial court abused its discretion when it sentenced him to a 44-year prison term. Specifically, he contends that the sentence fails to comport with the spirit of the law because the evidence he presented at his sentencing hearing showed that he was a Gulf War veteran, a hardworking and gifted music producer, and that he donated time and money to various charities.

The Illinois Constitution requires a trial court to impose a sentence that achieves a balance between the seriousness of the offense and the defendant's rehabilitative potential. Ill. Const. 1970, art. I, §11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). To find the proper balance, the trial court must consider: "the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992). Because the trial court is in the best position to weigh these factors, the sentence that the trial court imposes is entitled to great deference and will not be reversed absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *Lee*, 379 Ill. App. 3d at 539. A sentence that is within the statutory limits may be an abuse of discretion if it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210.

Here, defendant was convicted of possession with intent to deliver over 900 grams of heroin, an offense that carries a sentence of 15 to 60 years' imprisonment (720 ILCS 5701401(a)(I)(D) (West 2002)). Thus, the 44-year sentence imposed by the trial court falls within the permissible statutory range. The record reveals that the trial court considered evidence in aggravation and mitigation in imposing defendant's sentence. Specifically, the trial court noted that

defendant was a military veteran who had been a good provider for his family and that numerous individuals wrote letters attesting to defendant's good character. The court, however, also observed that defendant had a prior criminal background, including a prior narcotics offense and a weapons offense. Ultimately, the trial court found that a severe sentence was warranted based on the evidence presented at trial that showed defendant was the "top dog" in a "long-term plan, premeditated, well-operated scheme to violate the law for profit without regard to the suffering caused by the scheme." Acknowledging that the trial court is in the best position to determine the appropriate sentence, and based on the record, we conclude that the trial court did not abuse its discretion in sentencing defendant to 44 years' imprisonment.

For the foregoing reasons, the judgment of the trial court is affirmed.

Affirmed.

SOUTH, J., with KARNEZIS, P.J., and HOFFMAN, J., concurring.

APPENDIX B

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT –
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS)
vs.) Case No. 03-CR-12526
CHARLES PATTON (Impleaded))

REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 27th day of February, 2007, this cause came on for hearing before the Honorable DENNIS J. PORTER, Judge of said Court, upon the information herein, the defendant having entered a plea of not guilty.

APPEARANCES:

HON. RICHARD A. DEVINE,
State's Attorney of Cook County, by
MR. RIMAS CERNIUS,
MR. PATRICK COUGHLIN and
MS. RUTH GUDINO,
Assistant State's Attorneys,
Appeared on behalf of the People;

MR. THOMAS BREEN and
MR. TODD PUGH,
Appeared on behalf of the Defendant.

Gwendolyn Clark
Official Court Reporter
Circuit Court of Cook County
County Department – Criminal Division.

* * *

[D 112] MR. PUGH: We have one quick thing to put on the record.

During the execution of the search warrant at Charles and Inita Patton's home, there are a couple of firearms recovered. They are not charged with the firearms. We were going to move In Limine, and the state said they are not going to go into it in opening statements.

THE COURT: Are you intending to use evidence of these.

MR. COUGHLIN: Yes, we are not going to make reference to it in opening statements. We can address it if the Court likes tomorrow.

THE COURT: What's the basis for keeping them out?

MR. PUGH: It's irrelevant to the charges as far [D 113] as I know. I haven't seen any relevance anywhere in any of the discovery.

THE COURT: You are seeking to admit the evidence.

MR. COUGHLIN: I think so.

THE COURT: Any objection other than relevance?

MR. PUGH: Also considering if it has any relevance, Judge, it would be more prejudicial than probative.

THE COURT: One of the charges is possession with intent to deliver. Possession of firearms is evidence of intent to deliver.

MR. SEIDEN: It is. Then we're going to join in the motion with regard to Inita, and we did not voir dire with regards to firearms, the opinions the prospective jurors have regarding firearms, and we will join in the objection.

THE COURT: Objection is overruled. It's improper to voir dire them about any particular type of evidence.

* * *

APPENDIX C

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

vs. Case No. 03 CR 12516

CHARLES PATTON and INITA PATTON,
Defendant.

REPORT OF PROCEEDINGS had at the trial had before the Honorable DENNIS J. PORTER, one of the judges of said court, on the 22nd day of March, 2007.

APPEARANCES:

HON. RICHARD A. DEVINE,
State's Attorney of Cook County, by:
MESSRS. RIMAS CERNIUS, PATRICK COUGHLIN and MS. RUTH GUDINO,
Assistant State's Attorneys,
on behalf of the People;

MESSRS. THOMAS BREEN, TODD PUGH
on behalf of the Defendant Charles Patton;

Dorothy M. Nagle, CSR
Official Court Reporter
Criminal Division
CSR #084-003564

* * *

[7-P] THE COURT: People's 16 is 3.17. Defendant Inita Patton objects.

MR. SEIDEN: Sorry; 16 is in, right?

THE COURT: Yes.

They tendered their own accomplice instruction which was defense Inita Patton's No. 2. Their instruction is refused. I'm giving the State's instructions right out of the IPI. Anything [8-P] you want to say about that?

MR. BREEN: Charles Patton joined in that Inita instruction.

THE COURT: All right. On the grounds that theirs was argumentative and it singles out a witness too much. It's duplicit of the IPI instruction. So that will be refused.

Anything else you want to say about that, Charles Patton?

MR. BREEN: No, your Honor.

THE COURT: Anything else you want to say about that, Inita Patton?

MR. SEIDEN: No.

THE COURT: Anything else you want to say about that?

MR. CERNIUS: No.

THE COURT: All right. So that will be given over objection.

* * *

APPENDIX D

SUPREME COURT OF ILLINOIS

WEDNESDAY, NOVEMBER 25, 2009

THE FOLLOWING CASES ON THE LEAVE TO APPEAL DOCKET WERE DISPOSED OF AS INDICATED:

* * *

No. 108967 – People State of Illinois, respondent, v. Charles Patton, petitioner. Leave to appeal, Appellate Court, First District. (1-07-1625)

Petition for leave to appeal denied.

* * *

APPENDIX E

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VOLUME 1

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS COUNTY
DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
vs.
CHARLES PATTON and INITA PATTON,
Defendant.

Case No. 03 CR 12516

REPORT OF PROCEEDINGS had at the trial had before the Honorable DENNIS J. PORTER, one of the judges of said court, on the 26th day of February, 2007.

APPEARANCES:

HON. RICHARD DEVINE,
State's Attorney of Cook County, by:
MESSRS. RIMAS CERNIUS, PATRICK COUGHLIN and MS. RUTH GUDINO,
Assistant State's Attorneys,
on behalf of the People;

MESSRS. THOMAS BREEN, TODD PUGH
on behalf of the Defendant Charles Patton;

Dorothy M. Nagle, CSR
Official Court Reporter
Criminal Division
CSR #084-003564

* * *

[69-C] YVONNE WILSON,

a prospective juror, having been first duly sworn to answer questions, was examined as follows:

EXAMINATION

BY THE COURT:

Q. Yvonne Wilson?

A. Yes.

Q. Ms. Wilson, you live on the south side of Chicago?

A. Yes, I do.

Q. Is that a house or an apartment there?

A. House.

Q. Do you own it?

A. Yes.

Q. Anybody live there with you?

A. My husband and my granddaughter.

Q. How long have you been living there?

A. Approximately 21, 22 years.

Q. You said there was something about the nature of the charges that would prevent you from being fair to both sides?

A. Yes.

Q. What is that?

[70-C] A. My daughter, well, she finally got her act together. She is clean now. But my youngest grandson was born with heroin and cocaine in his blood and he also died. And I just don't know.

Q. Do you feel you could put aside, what happened to her, and just decide this case just based upon the evidence that you hear here in the courtroom, the law that I give you?

A. Now that I think about it, I think I can, yes.

Q. And that was the reason you answered the drug question like you did?

A. Right.

Q. You're a licensed practical nurse?

A. Yes, I am.

Q. How long have you worked for this company here?

A. It will be two years June the 6th.

Q. And your spouse, what does he do?

A. He is wood grinder.

Q. Have you ever served on a jury before?

A. Yes, I have.

Q. How long ago was that about?

A. I don't know, five, six, seven years. I [71-C] don't know.

Q. Do you remember what courthouse you went to?

A. It was downtown.

Q. So that would be a civil case?

A. Yes.

Q. Without telling me what your verdict was, did you actually sit, deliberate, and reach a verdict?

A. Yes, sir.

Q. The law is different between criminal cases and civil cases. In some cases, it's radically different so it's important to following the law as I give it to you. Do you understand?

A. Yes.

Q. Have you ever been in a courtroom before?

A. Yes, I have.

Q. Why is that?

A. I was in the courtroom one time a long – 50 years ago, for fighting or something. I really can't remember.

Q. Did you have to go to court for moral support for your daughter?

A. Yes, I went to –

[72-C] Q. Where did you go to court for that?

A. It's the juvenile thing.

Q. Juvenile?

A. Yeah, because I had to take her kids and take care of them while she was getting herself some help.

Q. Have you ever been the victim of a crime, you personally?

A. Maybe about 30 years ago, I was robbed in an elevator.

Q. Was that –

A. At gunpoint.

Q. Was that in Cook County?

A. Yes.

Q. Was this reported to the police?

A. Yes, I think it was.

Q. Was anybody prosecuted for that?

A. No, they never did find who it was.

Q. Any member of your immediate family or very close friend ever been the victim of a crime?

A. No, I don't think so.

Q. Do you have any relatives or close friends connected with law enforcement?

A. Not any in this state.

[73-C] Q. In some other state do you?

A. My first cousin is a judge.

Q. What state is that?

A. State of Iowa.

Q. Do you think you could be fair to both sides?

A. Yes.

Q. Do I have your word under oath that you will follow the law as I give it to you?

A. Yes.

Q. Thank you. You're No. 3.

* * *

[101-C] SARA HRUSKA,

a prospective juror, having been first duly sworn to answer questions, was examined as follows:

EXAMINATION

BY THE COURT:

Q. Sara Hruska?

A. Hruska.

Q. Ms. Hruska, you live in a southwest suburb?

[102-C] A. Yes.

Q. Is that a house or an apartment?

A. House.

Q. Do you own it?

A. No.

Q. Does anybody live there with you?

A. My parents, my brother and grandmother.

Q. How long have you lived there?

A. 21 years.

Q. You're a representative?

A. Yes.

Q. How long have you been working for this company?

A. About eight months.

Q. Before that, what were you doing?

A. Full time student.

Q. What is your major?

A. I was in speech communications.

Q. Have you ever served on jury before?

A. No.

Q. Have you ever been in a courtroom before?

A. Yes, I was in a car accident and for school I was there.

Q. Have you ever been the victim of a crime?

[103-C] A. I had my purse stolen.

Q. Was that in Cook County?

A. Yes.

Q. Did you report it to the police?

A. Yes.

Q. Anybody prosecuted?

A. No.

Q. Do you have any relatives or close friends that were victims of a crime?

A. No.

Q. Do you have any relatives or close friends connected with law enforcement?

A. I have one uncle that's a cop.

Q. Do you think you could [be] fair to both sides?

A. Yes.

Q. Do I have your word under oath you will follow the law as I give it to you?

A. Yes.

Q. Thank you. You're No. 13.

[104-C] BARBARA COLLINS,

a prospective juror, having been first duly sworn to answer questions, was examined as follows:

EXAMINATION

BY THE COURT:

Q. Barbara Collins?

A. Yes.

Q. Ms. Collins, you live on the west side?

A. Correct.

Q. Is that a house or an apartment there?

A. Apartment.

Q. Do you own the building?

A. No.

Q. Anybody live there with you?

A. Yes.

Q. Who is that?

A. My fiancee, my daughter and two grand kids.

Q. How long have you lived there?

A. 17 years.

Q. Are you working outside the home?

A. Retired.

Q. From what are you retired, were you doing before you retired?

[105-C] A. I worked in a factory.

Q. How long did you work for that factory?

A. 18 years.

Q. You have served on a jury before?

A. Yes, I have.

Q. In this building?

A. Yes.

Q. That was about how long ago?

A. About eleven years ago.

Q. Without telling me what your verdict was, did you actually sit, deliberate, and reach a verdict?

A. Yes, I did.

Q. The law changes over time so it's important that you follow the law as I give it to you. Do you understand that?

A. Yes.

Q. You said there was something about the nature of the charges that would prevent you from being fair to both sides?

A. Yes. I have two daughters that were heavy onto drugs. That's why I had to take three – one of them three kids and raise them.

Q. Can you put aside that and decide this case [106-C] just based upon the evidence that you hear here in this courtroom and the law I give you?

A. Yes.

Q. That was why you answered the drug question also?

A. Right.

Q. You said there was something about the – strike that.

Have you ever been in court before other than jury service?

A. Yes.

Q. Why is that?

A. I adopted children.

Q. Have you ever been the victim of a crime?

A. Yes.

Q. Nature of the crime?

A. Yes, I was robbed.

Q. With a weapon?

A. Beg your pardon?

Q. Was a weapon used?

A. Knife.

Q. Were you injured in that?

A. No, I wasn't.

Q. Was that reported to the police?

[107-C] A. Yes.

Q. Anybody prosecuted for it?

A. No.

Q. Did it happen in Cook County?

A. Yes.

Q. How long ago did that happen?

A. Quite a few years ago, maybe 16, 17, 18 years ago, quite awhile.

Q. Has any member of your immediate family or very c[l]ose friend ever been the victim of a crime?

A. No.

Q. Do you have any relatives or close friends connected with law enforcement?

A. Yes.

Q. That would be?

A. I have a sister-in-law that's a judge.

Q. In Cook County?

A. And her brother is a police officer.

Q. Is this person a judge in Cook County?

A. Yes.

Q. Do you think you could be fair to both sides?

A. Yes, I do.

Q. Do I have your word under oath you will [108-C] follow the law as I give it to you?

A. Yes.

Q. Thank you. You're No. 14.

* * *

[285-C] JACK KOENNECKE,

a prospective juror, having been first duly sworn to answer questions, was examined as follows:

EXAMINATION

BY THE COURT:

Q. Jack Koennecke, you live on the north side of Chicago?

A. Yes, I do.

Q. Is that a house or an apartment?

A. House.

Q. Do you own it?

[286-C] A. Yes.

Q. Anybody live there with you?

A. My wife.

Q. How long have you lived there?

A. 34 years.

Q. You're an architect?

A. Yes, sole proprietor.

Q. How long have you been self-employed?

A. About 20 years.

Q. Your spouse, is she working outside the home?

A. Yes, she does. She does real estate.

Q. Have you ever served on a jury before?

A. Yes, I have.

Q. How long ago was that?

A. About 18 years ago.

Q. Was that criminal or civil?

A. Civil in the Daley Center.

Q. Did you actually sit, deliberate and reach a verdict?

A. Yes, we did.

Q. Again, the law is different so you have to follow the law as I give it to you. Do you understand that?

[287-C] A. Yes.

Q. Have you ever been in a courtroom before other than jury service?

A. Yes, I was a witness at traffic court.

Q. Did you actually raise your hand, get sworn in and testify?

A. Yes, I did.

Q. Has any member of – have you ever been a victim of crime?

A. Yes, I have.

Q. The nature of the crime?

A. Burglary.

Q. Has any member of your immediate family ever been the victim of a crime?

A. My sister had her – victim of purse snatching twice, and my best friend who has been mugged and severely beaten.

Q. Did that happen in Cook County?

A. Yes, it did.

Q. Anyone prosecuted for that?

A. No.

Q. Do you have any relatives or close friends connected with law enforcement?

A. Yes, I do.

[288-C] Q. That would be who?

A. I have a God son who is a sergeant in the Chicago Police Department.

Q. Do you think you could be fair to both sides?

A. I would attempt to.

Q. Do I have your word under oath you will follow the law I give it to you?

A. Yes.

Q. You are No. 50. Thank you.

* * *

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS	)	
vs.	)	Case No. 03-CR-12526
CHARLES PATTON (Impleaded)	)	

REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 27th day of February, 2007, this cause came on for hearing before the Honorable DENNIS J. PORTER, Judge of said Court, upon the information herein, the defendant having entered a plea of not guilty.

APPEARANCES:

HON. RICHARD A. DEVINE,
State's Attorney of Cook County, by
MR. RIMAS CERNIUS,
MR. PATRICK COUGHLIN and
MS. RUTH GUDINO,
Assistant State's Attorneys,
Appeared on behalf of the People;

MR. THOMAS BREEN and
MR. TODD PUGH,
Appeared on behalf of the Defendant.

Gwendolyn Clark
Official Court Reporter
Circuit Court of Cook County
County Department-Criminal Division.

* * *

[D 67] DAVID ODREN,

called as a prospective juror, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q You live on the near north side of Chicago?

A That's correct.

Q Is that a house or apartment?

A It's an apartment.

Q Do you own the building?

A Yes.

Q Anybody live there with you?

A Yes.

Q Who is that?

A Domestic partner.

Q How long have you lived there?

A 3 years.

Q And what do you do for a living?

A Software engineer.

Q How long have you been working for this outfit here?

A 9 years.

Q Have you ever served on a jury before?

A Grand jury.

[D 68] Q In Chicago in this building?

A Yes.

Q The difference between a grand jury, they have two different functions; do you understand that? You have to follow the law as I give it to you; do you understand that?

A Yes.

Q Were you the foreperson of that grand jury?

A No.

Q Have you ever been in a courtroom before?

A Yes.

Q For?

A My mother's naturalization.

Q Have you ever been the victim of a crime, you personally?

A Yes.

Q The nature of the crime?

A Car breakins, breaking into my apartment when I was not present, and two muggings.

Q Is there any member of your immediate family or very close friends ever been the victim of a crime?

A When the break-ins occurred.

Q Do you have any relatives or close friends connected to law enforcement?

[D 69] A No.

Q You think you can be fair to both sides?

A Yes.

Q Do I have your word under oath you will follow the law as I give it to you?

A Yes.

THE COURT: You are No. 11.

* * *

APPENDIX F

You have heard testimony from Torrick Hall who:

(a) received immunity, that is, a promise from the government that any testimony or other information he/she provided would not be used against him/her in a criminal case; and

(b) received benefits from the government in connection with this case, namely he has signed a plea agreement in which the government has promised to recommend a sentence of 10 years; and

(c) has pleaded guilty to an offense arising out of the same occurrence for which the defendant is now on trial.

You may give his/her testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

Deft. Inita Patton's Instruction # 2

Seventh Circuit's *Federal Jury Instructions Criminal* § 3.13.

APPENDIX G

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

vs.

CHARLES PATTON and INITA PATTON,
Defendant.

Case No. 03 CR 12516

REPORT OF PROCEEDINGS had at the trial had before the Honorable DENNIS J. PORTER, one of the judges of said court, on the 22nd day of March, 2007.

APPEARANCES:

HON. RICHARD DEVINE, State's Attorney of Cook County, by:
MESSRS. RIMAS CERNIUS,
PATRICK COUGHLIN
and MS. RUTH GUDINO,
Assistant State's Attorneys,
on behalf of the People;

MESSRS. THOMAS BREEN, TODD PUGH
on behalf of the Defendant Charles Patton;

Dorothy M. Nagle, CSR
Official Court Reporter
Criminal Division
CSR #084-003564

* * *

[148-P] Only you are the judges of the believability of the witnesses and the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have and the reasonableness of his testimony considered in the light of all the evidence in the case.

* * *

[161-P] When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in the light of all the other evidence in the case.

* * *